

10/17/18

**CONTRACT BETWEEN  
ELECTION SYSTEMS & SUPPORT, LLC  
AND  
COUNTY OF GLOUCESTER**

**THIS CONTRACT** is made effective the 17<sup>th</sup> day of **October, 2018**, by and between the **COUNTY OF GLOUCESTER**, a body politic and corporate, with offices in Woodbury, New Jersey, hereinafter referred to as "County", and **ELECTION SYSTEMS & SUPPORT, LLC** of 11208 John Galt Boulevard, Omaha, Nebraska 68137, hereinafter referred to as "**Vendor**".

**RECITALS**

**WHEREAS**, there exists a need for the County to contract for the purchase of election hardware, support, and services; and

**WHEREAS**, the contract has been awarded consistent with the fair and open provisions of the Gloucester County Administrative Code and with N.J.S.A. 19:44A-20.4 et seq., which exempt this contract from competition because vendor has certified that it has not made or will not make during the term of the contract a disqualifying contribution; and

**WHEREAS**, the services to be performed as to this contract are relative to election expenses and therefore is an exception to the Local Public Contracts Law as described and provided by N.J.S.A. 40A:11-5(1)(j); and

**WHEREAS**, Vendor represents that he is qualified to perform said services and desires to so perform pursuant to the terms and provisions of this Contract.

**NOW, THEREFORE**, in consideration of the mutual promises, agreements and other considerations made by and between the parties, the County and the Vendor do hereby agree as follows:

**TERMS OF AGREEMENT**

1. **TERM.** Contract shall be effective upon the execution of contract and Vendor shall complete delivery and all services within a reasonable period of time.

2. **COMPENSATION.** Vendor shall be compensated in a total contract amount of \$99,699.50, as per Vendor's Sales Order Agreement, which is incorporated in its entirety by reference.

Vendor shall be paid in accordance with this Contract document upon receipt of an invoice and a properly executed voucher. After approval by County, the payment voucher shall be placed in line for prompt payment.

Each invoice shall contain an itemized, detailed description of all work performed during the billing period. Failure to provide sufficient specificity shall be cause for rejection of the

invoice until the necessary details are provided.

It is also agreed and understood that the acceptance of the final payment by Vendor shall be considered a release in full of all claims against the County arising out of, or by reason of, the work done and materials furnished under this Contract.

3. **DUTIES OF VENDOR.** The specific duties of the Vendor shall be to provide and deliver election hardware, support, and services, as more specifically described in Attachment A, attached hereto and made a part hereof.

4. **FURTHER OBLIGATIONS OF THE PARTIES.** During the performance of this Contract, the Vendor agrees as follows:

The Vendor or Subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the Vendor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The Vendor or Subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The Vendor or Subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the vendor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Vendor or Subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The Vendor or Subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

5. **LICENSING AND PERMITTING.** If the Vendor or any of its agents is required to

maintain a license, or to maintain in force and effect any permits issued by any governmental or quasi-governmental entity in order to perform the services which are the subject of this Contract, then prior to the effective date of this Contract, and as a condition precedent to its taking effect, Vendor shall provide to the County a copy of all current license and permits to operate in the State of New Jersey, which license and permits shall be in good standing and shall not be subject to any current action to revoke or suspend, and shall remain so throughout the term of this Contract.

Vendor shall notify the County immediately in the event of suspension, revocation or any change in status (or in the event of the initiation of any action to accomplish such suspension, revocation and/or change in status) of license or certification held by Vendor or its agents.

6. **TERMINATION.** This Contract may be terminated as follows:

A. Pursuant to the termination provisions set forth in the Bid Specifications or in the Request for Proposals, if any, as the case may be, which are specifically referred to and incorporated herein by reference.

B. If Vendor is required to be licensed in order to perform the services which are the subject of this Contract, then this Contract may be terminated by County in the event that the appropriate governmental entity with jurisdiction has instituted an action to have the Vendor's license suspended, or in the event that such entity has revoked or suspended said license. Notice of termination pursuant to this subparagraph shall be effective immediately upon the giving of said notice.

C. If, through any cause, the Vendor or Subcontractor, where applicable, shall fail to fulfill in timely and proper manner his obligations under this Contract, or if the Vendor shall violate any of the covenants, agreements, or stipulations of this Contract, the County shall thereupon have the right to terminate this Contract by giving written notice to the Vendor of such termination and specifying the effective date thereof. In such event, all finished or unfinished documents, data, studies, and reports prepared by the Vendor under this Contract, shall be forthwith delivered to the County.

D. The County may terminate this Contract for public convenience at any time by a notice in writing from the County to the Vendor. If the Contract is terminated by the County as provided herein, the Vendor will be paid for the services rendered to the time of termination.

E. Notwithstanding the above, the Vendor or Subcontractor, where applicable, shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Contract by the Vendor, and the County may withhold any payments to the Vendor for the purpose of set off until such time as the exact amount of damages due the County from the Vendor is determined.

F. Termination shall not operate to affect the validity of the indemnification provisions of this Contract, nor to prevent the County from pursuing any other relief or damages to which it may be entitled, either at law or in equity.

7. **PROPERTY OF THE COUNTY.** All materials developed, prepared, completed, or acquired by Vendor during the performance of the services specified by this Contract, including, but not limited to, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports, shall become the property of the County, except as may otherwise be stipulated in a written statement by the County.

8. **NO ASSIGNMENT OR SUBCONTRACT.** This Contract may not be assigned nor subcontracted by the Vendor, except as otherwise agreed in writing by both parties. Any attempted assignment or subcontract without such written consent shall be void with respect to the County and no obligation on the County's part to the assignee shall arise, unless the County shall elect to accept and to consent to such assignment or subcontract.

9. **INDEMNIFICATION.** The Vendor or Subcontractor, where applicable, shall be responsible for, shall keep, save and hold the County of Gloucester harmless from, shall indemnify and shall defend the County of Gloucester against any claim, loss, liability, expense (specifically including but not limited to costs, counsel fees and/or experts' fees), or damage resulting from all mental or physical injuries or disabilities, including death, to employees or recipients of the Vendor's services or to any other persons, or from any damage to any property sustained in connection with this contract which results from any acts or omissions, including negligence or malpractice, of any of its officers, directors, employees, agents, servants or independent Vendors, or from the Vendor's failure to provide for the safety and protection of its employees, or from Vendor's performance or failure to perform pursuant to the terms and provisions of this Contract. The Vendor's liability under this agreement shall continue after the termination of this agreement with respect to any liability, loss, expense or damage resulting from acts occurring prior to termination.

10. **POLITICAL CONTRIBUTION DISCLOSURE AND PROHIBITION.** This contract has been awarded to Vendor based on the merits and abilities of Vendor to provide the goods or services described in this Contract. This contract was awarded through a non-competitive process pursuant to N.J.S.A. 19:44A-20.4 et seq. The signer of this Contract does hereby certify that Vendor, its subsidiaries, assigns or principals controlling in excess of 10% of the Vendor will not make a reportable contribution during the term of the contract to any political party committee in Gloucester County if a member of that political party is serving in an elective public office of Gloucester County when the contract is awarded, or to any candidate committee of any person serving in an elective public office of Gloucester County when the contract is awarded.

11. **INSURANCE.** Vendor shall, if applicable to the services to be provided, maintain general liability, automobile liability, business operations, builder's insurance and Workers' Compensation insurance in amounts, for the coverages, and with companies deemed satisfactory by County, and which shall be in compliance with any applicable requirements of the State of New Jersey. Vendor shall, simultaneously with the execution of this Contract, deliver certifications of said insurance to County, naming County as an additional insured.

If Vendor is a member of a profession that is subject to suit for professional malpractice, then Vendor shall maintain and continue in full force and effect an insurance policy for

professional liability/malpractice with limits of liability acceptable to the County. Vendor shall, simultaneously with the execution of this Contract, and as a condition precedent to its taking effect, provide to County a copy of a certificate of insurance, verifying that said insurance is and will be in effect during the term of this Contract. The County shall review the certificate for sufficiency and compliance with this paragraph, and approval of said certificate and policy shall be necessary prior to this Contract taking effect. Vendor also hereby agrees to continue said policy in force and effect for the period of the applicable statute of limitations following the termination of this Contract and shall provide the County with copies of certificates of insurance as the certificates may be renewed during that period of time.

12. **SET-OFF.** Should Vendor either refuse or neglect to perform the service that Vendor is required to perform in accordance with the terms of this Contract, and if expense is incurred by County by reason of Vendor's failure to perform, then and in that event, such expense shall be deducted from any payment due to Vendor. Exercise of such set-off shall not operate to prevent County from pursuing any other remedy to which it may be entitled.

13. **PREVENTION OF PERFORMANCE BY COUNTY.** In the event that the County is prevented from performing this Contract by circumstances beyond its control, then any obligations owing by the County to the Vendor shall be suspended without liability for the period during which the County is so prevented.

14. **METHODS OF WORK.** Vendor agrees that in performing its work, it shall employ such methods or means as will not cause any interruption or interference with the operations of County or infringe on the rights of the public.

15. **NON-WAIVER.** The failure by the County to enforce any particular provision of this Contract, or to act upon a breach of this Contract by Vendor, shall not operate as or be construed as a waiver of any subsequent breach, nor a bar to any subsequent enforcement.

16. **PARTIAL INVALIDITY.** In the event that any provision of this Contract shall be or become invalid under any law or applicable regulation, such invalidity shall not affect the validity or enforceability of any other provision of this Contract.

17. **CHANGES.** This Contract may be modified by approved change orders, consistent with applicable laws, rules and regulations. The County, without invalidating this Contract, may order changes consisting of additions, deletions, and/or modifications, and the contract sum shall be adjusted accordingly. This Contract and the contract terms may be changed only by change order. The cost or credit to the County from change in this Contract shall be determined by mutual agreement before executing the change involved.

18. **NOTICES.** Notices required by this Contract shall be effective upon mailing of notice by regular and certified mail to the addresses set forth above, or by personal service, or if such notice cannot be delivered or personally served, then by any procedure for notice pursuant to the Rules of Court of the State of New Jersey.

19. **GOVERNING LAW, JURISDICTION AND VENUE.** This agreement and all questions relating to its validity, interpretation, performance or enforcement shall be governed by

and construed in accordance with the laws of the State of New Jersey. The parties each irrevocably agree that any dispute arising under, relating to, or in connection with, directly or indirectly, this agreement or related to any matter which is the subject of or incidental to this agreement (whether or not such claim is based upon breach of contract or tort) shall be subject to the exclusive jurisdiction and venue of the state and/or federal courts located in Gloucester County, New Jersey or the United States District Court, District of New Jersey, Camden, New Jersey. This provision is intended to be a "mandatory" forum selection clause and governed by and interpreted consistent with New Jersey law and each waives any objection based on forum non conveniens.

20. **INDEPENDENT VENDOR STATUS.** The parties acknowledge that Vendor is an independent Vendor and is not an agent of the County.

21. **CONFLICT OF INTEREST.** Vendor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services pursuant to this Contract. The Company further covenants that in the performance of this Contract, no person having any such interest shall be employed.

22. **CONFIDENTIALITY.** Vendor agrees not to divulge or release any information, reports, or recommendations developed or obtained in connection with the performance of this Contract, during the term of this Contract, except to authorized County personnel or upon prior approval of the County.

23. **BINDING EFFECT.** This Contract shall be binding on the undersigned and their successors and assigns.

24. **CONTRACT PARTS.** Attached hereto and incorporated herein are various appendices, schedules and attachments (collectively, "the attachments") which provide details of the Vendor's obligations concerning reporting requirements, record keeping and the like. Also incorporated herein are any other specifications issued by the County in connection with this contract. If there is a conflict between any of the attachments and the specifications the specifications will control. If there is a conflict between any of the attachments or the specifications and the Contract, then this Contract will control.

THIS CONTRACT is dated this 17<sup>th</sup> day of **October, 2018**.

**IN WITNESS WHEREOF**, the County has caused this instrument to be signed by its Director, attested by its Clerk, and its corporate seal affixed hereunto, pursuant to a Resolution of the said party of the first part passed for that purpose, and Vendor has caused this instrument to be signed by its properly authorized representative.

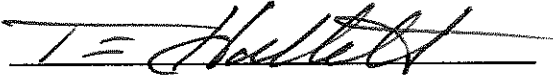
**ATTEST:**

  
LAURIE J. BURNS, CLERK

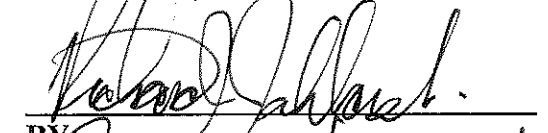

**COUNTY OF GLOUCESTER**

  
ROBERT M. DAMMING, DIRECTOR

**ATTEST:**



**ELECTION SYSTEMS &  
SOFTWARE, LLC**

  
BY:   
(Please Print Name)

**ATTACHMENT A**



## Attachment A



11208 JOHN GALT BLVD  
OMAHA, NE 68137-2364  
(402) 593-0101

# Sales Order Agreement

Customer P.O. #: \_\_\_\_\_

1st Election Date: To be Agreed Upon by the Parties

Estimated Delivery Date: To be Agreed Upon by the Parties

Phone Number: (856) 384-4500

Fax Number: N/A

Customer Contact, Title: Stephanie Salvatore

Customer Name: Gloucester County, New Jersey

Type of Sale: ☒ NEW

Type of Equip: ☒ NEW ☐ REFURBISHED

Bill To: \_\_\_\_\_

Gloucester County, New Jersey

Stephanie Salvatore

550 Grove Road

Paulsboro, NJ 08086

Ship To: \_\_\_\_\_

Gloucester County, New Jersey

Stephanie Salvatore

550 Grove Road

Paulsboro, NJ 08086

	<u>Item</u>	<u>Description</u>	<u>Qty</u>	<u>Price</u>	<u>Total</u>
1	ExpressVote XL	ExpressVote XL Full Face Ballot Terminal with Paper Path, Paper Roll, Cart, Dust Cover, Voter Light, Ballot Bin, Backup Battery, and 4GB Flash Drive	10	\$8,250.00	\$82,500.00
2	ExpressVote XL	Keyed Differently Upgrade - NJ Specific	10	\$5.00	\$50.00
3	ExpressVote XL	14 Hour Extended Battery Kit	10	\$250.00	\$2,500.00
4	ExpressVote XL	UVC Device with Headphones	4	\$230.00	\$920.00
5	ExpressVote XL	ExpressVote Ballot Card Stock - 14" (250 per pkg)	12	\$23.75	\$285.00
6	ExpressVote XL	Equipment Installation	10	\$200.00	\$2,000.00
7	Services	Equipment Operations Training Day	1	\$1,650.00	\$1,650.00
8	Services	Election On-Site Support Event	1	\$4,525.00	\$4,525.00
9	Services	Coding	1	\$1,769.50	\$1,769.50
10	Shipping	Shipping & Handling	1	\$3,500.00	\$3,500.00

Freight Billable: yes ☒ no ☐

Order Subtotal \$ 99,699.50

Discount \$ -

Order Total \$ 99,699.50

# Sales Order Agreement

<b>Payment Terms</b>	100% of Order Total due Thirty (30) Calendar Days after the later of (a) Equipment Delivery, or (b) Receipt of Corresponding ES&S Invoice.
	Note 1: Any applicable state and local taxes are not included, and are the responsibility of the Customer.
	Note 2: In no event shall Customer's payment obligations hereunder, or the due dates for such payments, be contingent or conditional upon Customer's receipt of federal and/or state funds.
<b>Warranty Period (Years):</b>	One (1) Year From Equipment Delivery
<b>Hardware Maintenance and Software License, Maintenance and Support Services (Post-Warranty Period)</b>	
The terms, conditions, and pricing for the Hardware Maintenance and Software License, Maintenance and Support Services (Post-Warranty Period) are set forth in Exhibit A attached hereto.	
SEE VENDOR GENERAL TERMS AND CONDITIONS	

## VENDOR GENERAL TERMS

1. **Purchase/License Terms.** Subject to the terms and conditions of this Contract, Vendor agrees to sell and/or license, and County agrees to purchase and/or license, the Vendor Equipment, Vendor Software and Vendor Firmware described on the front side of this Attachment A. The Vendor Firmware and Vendor Software are collectively referred to hereinafter as the "Vendor Software." The payment terms for the Vendor Equipment and Vendor Software are set forth on the front side of this Attachment A. Title to the Vendor Equipment shall pass to County when County has paid Vendor the total amount set forth on the front side of this Attachment A for the Vendor Equipment. The consideration for Vendor's grant of the license during the Initial Term for the Vendor Firmware is included in the cost of the Vendor Equipment.

2. **Grant of Licenses.** Subject to the terms and conditions of this Contract, Vendor hereby grants to County nonexclusive, nontransferable licenses for its bona fide full time, part time or temporary employees to use the Vendor Software and related Documentation in the Jurisdiction while County is using the Vendor Equipment and timely pays the applicable annual Vendor Software License, Maintenance and Support Fees set forth on Schedule A1. The licenses allow such bona fide employees to use and copy the Vendor Software (in object code only) and the Documentation, in the course of operating the Vendor Equipment and solely for the purposes of defining and conducting elections and tabulating and reporting election results in the Jurisdiction.

3. **Prohibited Uses.** County shall not take any of the following actions with respect to the Vendor Software or the Documentation:

a. Reverse engineer, decompile, disassemble, re-engineer or otherwise create, attempt to create, or permit, allow or assist others to create, the source code or the structural framework for part or all of the Vendor Software;

b. Cause or permit any use, display, loan, publication, transfer of possession, sublicensing or other dissemination of the Vendor Software or Documentation, in whole or in part, to or by any third party without Vendor's prior written consent; or

c. Cause or permit any change to be made to the Vendor Software without Vendor's prior written consent; or

d. Allow a third party to cause or permit any copying, reproduction or printing of any output generated by the Vendor Software (except finished ballots by ballot printers selected by County) in which Vendor owns or claims any proprietary intellectual property rights (e.g., copyright, trademark, patent pending or patent), including, but not limited to, any ballot shells or ballot code stock.

4. **Term of Licenses.** The licenses granted in Section 2 shall commence upon the delivery of the Vendor Software described in Section 2 and shall continue for a one (1) year period (the "Initial License Term"). Upon expiration of the Initial License Term, the licenses shall automatically renew for an unlimited number of successive one-year periods (each a "License Renewal Term") upon the payment by County of the annual software license and software maintenance and support fee as set forth on the front side of this Contract. Vendor may terminate either license if County fails to pay the consideration due for, or breaches Sections 2, 3, or 9 with respect to, such license. Upon the termination of either of the licenses granted in Section 2 for Vendor Software or upon County's discontinuance of the use of any Vendor Software, County shall immediately return such Vendor Software and the related Documentation (including any and all copies thereof) to Vendor, or (if requested by Vendor) destroy such Vendor Software and Documentation and certify in writing to Vendor that such destruction has occurred.

5. **Updates.** During the Initial License Term or any License Renewal Term, Vendor may provide new releases, upgrades or maintenance patches to the Vendor Software, together with appropriate Documentation ("Updates"), on a schedule defined by Vendor. County is responsible for obtaining any upgrades or purchases of Third Party Items required to operate the Updates as well as the cost of any replacements, retrofits or modifications to the Vendor Equipment which may be necessary in order to operate the Updates. All Updates shall be deemed to be Vendor Software for purposes of this Contract upon delivery. County may install the Updates in accordance with Vendor's recommended instructions or may request that Vendor install the Updates. Vendor may charge County at its then-current rates to (i) install the Updates; (ii) train County on Updates, if such training is requested by County or (iii) provide maintenance and support on the Vendor Software that is required as a result of County's failure to timely or properly install an Update. County shall be responsible for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by County's failure to install and use the most recent Update provided to it by Vendor. If County proposes changes in the Vendor Software to Vendor, such proposals will become Vendor's property. Vendor may, in its sole discretion, elect to make or not to make such changes without reference or compensation to County or any third party. Vendor represents to County that the Updates will comply with all applicable state law requirements at the time of delivery. County shall be responsible to ensure that it has installed and is using only certified versions of Vendor Software in accordance with applicable law. In the event that any Updates are required due to changes in state law, Vendor reserves the right to charge County for the following:

(i) the total cost of any third party items that are required in order to operate the Updates;

(ii) the total cost of any replacements, retrofits or modifications to the Vendor Equipment contracted for herein that may be developed and offered by Vendor in order for such Vendor Equipment to remain compliant with applicable laws and regulations; and

(iii) County's pro-rata share of the costs of designing, developing and/or certification by applicable federal and state authorities of such state mandated Updates.

County's pro-rata share of the costs included under subsection (iii) above shall be determined at the time by dividing the number of registered voters in County's jurisdiction by the total number of registered voters in all counties in County's state to which Vendor has sold and/or licensed the Equipment and/or Licensed Software purchased and licensed by County under this Contract. County shall pay Vendor the entire costs incurred for design, development and certification of any Update which is required due to a change in local law or is otherwise requested or required by County.

6. **Delivery; Risk of Loss.** The Estimated Delivery Dates and First Election Use (if any) set forth on the front side of this Contract are estimates and may only be established or revised, as applicable, by the parties, in a written amendment to this Contract, because of delays in executing this Contract, changes requested by County, product availability and other events. Vendor will notify County of such revisions as soon as Vendor becomes aware of such revisions. Risk of loss for the Vendor Equipment and Vendor Software shall pass to County when such items are delivered to County's designated location. Upon transfer of risk of loss to County, County shall be responsible for obtaining and maintaining sufficient casualty insurance on the Vendor Equipment and Vendor Software and shall name Vendor as an additional insured thereunder and, at Vendor's request, shall deliver written evidence thereof to Vendor until all amounts payable to Vendor under this Contract have been paid by County.

## 7. **Warranty.**

a. **Vendor Equipment/Vendor Software.** Vendor warrants that for a one (1) year period (the "Warranty Period"), it will repair or replace any component of the Vendor Equipment or Vendor Software which, while under normal use and service: (i) fails to perform in accordance with its Documentation in all material respects, or (ii) is defective in material or workmanship. The Warranty Period will commence upon delivery. The Warranty shall not include the repair or replacement of any Vendor Equipment components that are consumed in the normal course of operating the Vendor Equipment, including printer ribbons, printer cartridges, paper rolls, batteries, removable media storage devices, PCMCIA cards or marking devices. Any repaired or replaced item of Vendor Equipment or Vendor Software shall be warranted only for the unexpired term of the Warranty Period. All replaced components of the Vendor Equipment or Vendor Software will become the property of Vendor. This warranty is effective provided that (i) County notifies Vendor within three (3) business days of the discovery of the failure of performance or defect and is otherwise in compliance with its obligations hereunder, (ii) the Vendor Equipment or Vendor Software to be repaired or replaced has not been repaired, changed, modified or altered except as authorized or approved by Vendor, (iii) the Vendor Equipment or Vendor Software to be repaired or replaced is not damaged as a result of accident, theft, vandalism, neglect, abuse, use which is not in accordance with instructions or specifications furnished by Vendor or causes beyond the reasonable control of Vendor or County, including acts of God, fire, floods, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, and (iv) County has installed and is using the most recent update provided to it by Vendor. This warranty is void for any units of equipment which: (i) have not been stored or operated in a temperature range according their specifications, (ii) have been severely handled so as to cause mechanical damage to the unit, or (iii) have been operated or handled in a manner inconsistent with reasonable treatment of an electronic product. The terms of post-warranty license, maintenance and support are set forth on Exhibit A.

b. **Exclusive Remedies/Disclaimer, IN THE EVENT OF A BREACH OF SUBSECTION 7(a), VENDOR'S OBLIGATIONS, AS DESCRIBED IN SUCH SUBSECTION, ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES. VENDOR EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WHICH ARE NOT SPECIFICALLY SET FORTH IN THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. FURTHER, IN THE EVENT COUNTY DECLINES VENDOR'S INSTALLATION AND ACCEPTANCE TESTING SERVICES OR IN ANY WAY AT ANY TIME ALTERS, MODIFIES OR CHANGES ANY EQUIPMENT, SOFTWARE, THIRD PARTY ITEMS AND/OR NETWORK (COLLECTIVELY "SYSTEM") CONFIGURATIONS WHICH HAVE BEEN PREVIOUSLY INSTALLED BY VENDOR OR WHICH ARE OTHERWISE REQUIRED IN ACCORDANCE WITH THE CERTIFIED VOTING SYSTEM CONFIGURATION, ALL WARRANTIES OTHERWISE PROVIDED HEREUNDER WITH RESPECT TO THE SYSTEM PURCHASED, LEASED, RENTED AND/OR LICENSED UNDER THIS AGREEMENT SHALL BE VOID AND OF NO FURTHER FORCE AND EFFECT.**

8. **Limitation Of Liability.** Neither party shall be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever arising out of or relating to this Contract. Neither party shall be liable for the other party's negligent or willful misconduct. Vendor's total liability to County arising out of or relating to this Contract shall not exceed the aggregate amount to be paid to Vendor hereunder. By entering into this Contract, County agrees to accept responsibility for (a) the selection of, use of and results obtained from any equipment, software or services not provided by Vendor and used with the Vendor Equipment or Vendor Software; or (b) user errors, voter errors or problems encountered by any individual in voting that are not otherwise a result of the failure of Vendor to perform. VENDOR shall not be liable under this Contract for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee that is caused by (y) County's failure to timely or properly install and use the most recent update provided to it by Vendor or (z) County's election not to receive, or to terminate, the Hardware Maintenance Services or the Vendor Software Maintenance and Support.

9. **Proprietary Rights.** County acknowledges and agrees as follows:

Vendor owns the Vendor Software, all Documentation and training materials provided by Vendor, the design and configuration of the Vendor Equipment and the format, layout, measurements, design and all other technical information associated with the ballots to be used with the Vendor Equipment. County has the right to use the aforementioned items to the extent specified in this Contract. Vendor also owns all patents, trademarks, copyrights, trade names and other proprietary or intellectual property in, or used in connection with, the aforementioned items. The aforementioned items also contain confidential and proprietary trade secrets of Vendor that are protected by law and are of substantial value to Vendor. County shall keep the Vendor Software and related Documentation free and clear of all claims, liens and encumbrances and shall maintain all copyright, trademark, patent or other intellectual or proprietary rights notices that are set forth on the Vendor Equipment, the Vendor Software, the Documentation, training materials and ballots that are provided, and all permitted copies of the foregoing.

10. **Termination.** This Contract may be terminated, in writing, at any time by either party if the other party breaches any material provision hereof and does not cure such breach within 30 days after it receives written notification thereof from the non-breaching party.

## 11. **Disputes.**

a. **Payment of Undisputed Amounts.** In the event of a dispute between the parties regarding (1) a product or service for which payment has not yet been made to Vendor, (2) the amount due Vendor for any product or service, or (3) the due date of any payment, County shall nevertheless pay to Vendor when due all undisputed amounts. Such payment shall not constitute a waiver by County or Vendor of any of its rights and remedies against the other party.

b. **Remedies for Past Due Undisputed Payments.** If any undisputed payment to Vendor is past due more than 30 days, Vendor may suspend performance under this Contract until such amount is paid. Any disputed or undisputed payment not paid by County to Vendor when due shall bear interest from the due date at a rate equal to the lesser of one and one-half percent per month or the maximum amount permitted by applicable law for each month or portion thereof during which it remains unpaid.

12. **Compliance with Laws.** Vendor warrants to County that, at the time of delivery, the Vendor Equipment and Vendor Software sold and licensed under this Contract will comply with all applicable requirements of federal and state election laws and regulations that are mandatory and effective as of the Effective Date and will have been certified by the appropriate state authorities for use in County's state. The Vendor Equipment and Vendor Software, including all components will be provided to County with a hardened network for the election management software ("EMS"), in accordance with the guidelines of the United States Election Assistance Commission. During the Term of this

Contract, in the event County fails to maintain EMS in the hardened network or allows any internal or external access to the hardened network, County agrees to indemnify and hold harmless Vendor from and against any and all claims, damages, losses, liens, obligations, liabilities, judgments, assessed damages, costs, expenses (including reasonable attorney's fees) and the like arising out of or related to the County's breach of its obligations hereunder.

13. **Voting System Reviews.** In the event that the Jurisdiction or the State require any future reviews or examinations ("Reviews") of current or previous versions of state-certified Vendor voting systems or components thereof that are not otherwise required as a result of any changes or modifications voluntarily made by Vendor to the Vendor Software and/or Vendor Equipment licensed and sold hereunder, County shall be responsible for:

(i) County's pro-rata share of such Review costs;

(ii) County's pro-rata share of the costs of designing, developing, manufacturing and/or certification by applicable federal and state authorities of any mandated modifications to the Vendor Equipment and/or Vendor Software that may result from such Reviews; and

(iii) the total cost of any third party items that are required in order for the Vendor Equipment and/or Vendor Software to satisfy any new requirements resulting from such Reviews in order to remain certified;

County's pro-rata share of the costs included under subsections 13(ii) and 13(iii) above shall be determined at the time by dividing the number of registered voters in County's jurisdiction by the total number of registered voters in all counties in County's state to which Vendor has sold and/or licensed the Vendor Equipment and/or Vendor Software purchased and licensed by County under this Contract.

**EXHIBIT A**  
**SOFTWARE LICENSE, MAINTENANCE AND SUPPORT SERVICES**  
**(POST-WARRANTY PERIOD)**

**ARTICLE I**  
**GENERAL**

1. **Term; Termination.** This Exhibit A for Software License, Maintenance and Support Services shall be in effect for the coverage period as described in Schedule A1 (the "Initial Term"). Upon expiration of the Initial Term, this Exhibit A shall automatically renew for an unlimited number of successive **One-Year Periods** (each a "Renewal Period") until this Exhibit A is terminated by the first to occur of (a) either party's written election not to renew, which shall be delivered to the other party at least thirty (30) days prior to the end of the Initial Term or any Renewal Period, as applicable, (b) the date which is thirty (30) days after either party notifies the other that it has materially breached this Exhibit A, if the breaching party fails to cure such breach (except for a breach pursuant to subsection (c), which will require no notice), or (c) the date which is thirty (30) days after County fails to pay any amount due to Vendor under this Exhibit A.

2. **Fees.** In consideration for Vendor's agreement to provide Software License, Maintenance and Support Services under this Exhibit A, County shall pay to Vendor the Software License, Maintenance and Support Fees set forth on Schedule A1 for the Initial Term. The Software License, Maintenance and Support Fees for the Initial Term are due as set forth on Schedule A1. Vendor may increase the Software License, Maintenance and Support Fees for a Renewal Period by not more than 5% of the amount of the most recent Fees paid by County. All fees for any Renewal Period shall be due and payable no later than thirty (30) days prior to the beginning of such Renewal Period. The Software License, Maintenance and Support Fee shall be comprised of a fee for the Software License, Maintenance and Support provided for the Vendor Software, and shall be in addition to any fees or charges separately referred to in any Section of this Exhibit A. If County elects to receive Software License, Maintenance and Support for an Add-On or New Product during the Initial Term or any Renewal Period thereof, Vendor will charge an incremental Software License, Maintenance and Support Fee for such services.

**ARTICLE II**  
**SOFTWARE LICENSE, MAINTENANCE AND SUPPORT SERVICES**

1. **License and Services Provided.** Vendor shall provide license, maintenance and support services ("Software License, Maintenance and Support") for the Vendor Software to allow County to continue to license and use the software in accordance with the license terms set forth in Sections 2-4 of the General Terms as well as to enable it to perform in accordance with its Documentation in all material respects, and to cure any defect in material or workmanship. The specific Software License, Maintenance and Support services provided by Vendor and each party's obligations with respect to such services are set forth on Schedule A1.

2. **Updates.** During the Initial Term and any Renewal Period thereof, Vendor may continue to Updates in accordance with the terms of Section 5 of the General Terms.

3. **Conditions.** Vendor shall not provide Software License, Maintenance and Support for any item of Vendor Software if such item requires such services as a result of (a) repairs, changes, modifications or alterations not authorized or approved by Vendor, (b) accident, theft, vandalism, neglect, abuse or use that is not in accordance with instructions or specifications furnished by Vendor, (c) causes beyond the reasonable control of Vendor or County, including acts of God, fire, flooding, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, (d) County's failure to timely and properly install and use the most recent update provided to it by Vendor, or (e) County's failure to notify Vendor within three (3) business days after County knows of the need for such services. Any such Software License, Maintenance and Support

shall be provided at the fees to be agreed upon by the parties if and when the need for such Software License, Maintenance and Support arises. Replacement versions of Software requested by County as a result of items set forth in this Section 3 or as a result of County's actions or inactions shall be billable to County at Vendor's then current rates.

4. **Proprietary Rights.** Vendor shall own the entire right, title and interest in and to all corrections, programs, information and work product conceived, created or developed, alone or with County or others, as a result of or related to the performance of this Exhibit A, including all proprietary rights therein or based thereon. Subject to the payment of all Software License, Maintenance and Support Fees, Vendor hereby grants to County a non-exclusive license to use that portion of such corrections, programs, information and work product that Vendor actually delivers to County pursuant to this Exhibit A. All licensed items shall be deemed to be Vendor Software for purposes of this Exhibit A. Except and to the extent expressly provided herein, Vendor does not grant to County any right, license, or other proprietary right, express or implied, in or to any corrections, programs, information, or work product covered by this Exhibit A.

5. **Reinstatement of Software License, Maintenance and Support.** If the Initial Term or any Renewal Period thereof expires without being renewed, County may thereafter receive a Software License and resume receiving Software Maintenance and Support upon (a) notification to Vendor, (b) payment of all fees, which would have been due to Vendor had the Initial Term or any Renewal Period not expired, and (c) the granting to Vendor of access to the Vendor Software, so that Vendor may analyze it and perform such maintenance as may be necessary before resuming the Software License, Maintenance and Support services.

**Schedule A1**  
**Pricing Summary**

<b><u>Summary:</u></b>		
<b>Description</b>	<b>Refer To</b>	<b>Amount</b>
Vendor Firmware License, Maintenance and Support Fees	Vendor Software License, Maintenance and Support Description and Fees Below	\$750.00
<b>Total Maintenance Fees for the Initial Term:</b>		<b>\$750.00</b>
<b><u>Payment Terms:</u></b>		
Vendor shall Invoice County annually for each year of the Initial Term. Payment is due before the start of each period within the Initial Term.		
<b><u>Terms &amp; Conditions:</u></b>		
<b>Note 1:</b>		
Any applicable state and local taxes are not included, and are the responsibility of County.		
<b>Note 2:</b>		
In the event the County subsequently acquires any Vendor Equipment and or Vendor Software, the post warranty maintenance and support periods will be adjusted to synchronize the dates in order to conform with the current term.		

**Vendor SOFTWARE LICENSE, MAINTENANCE AND SUPPORT DESCRIPTION AND FEES  
FIRMWARE**

Initial Term: Expiration of the Warranty Period through the first anniversary thereof

Listed below are the Hardware Products and Fees for which Firmware License, Maintenance and Support will be provided:

Qty	Description	Coverage Period	Annual Firmware License, Maintenance and Support Fee Per Unit	Firmware License, Maintenance and Support Fee In Total
10	ExpressVote XL Terminal	Year 1	\$75.00	\$750.00
<b>Total Firmware License, Maintenance and Support Fees for the Initial Term</b>				<b>\$750.00</b>

**Software License, Maintenance and Support Services Provided by Vendor under the Contract**

1. Telephone Support.
2. Issue Resolution.
3. Technical Bulletins will be available through County's Vendor Web-based portal.

**Note:** Except for those Software License, Maintenance and Support services specifically set forth herein, Vendor is under no obligation and shall not provide other Software License, Maintenance and Support services to the County unless previously agreed upon by the parties.

**Software License, Maintenance and Support and Hardware Maintenance and Support Services –  
County Responsibilities**

1. County shall have completed a full software training session for each product selected.
  - County shall have completed training at a proficiency level to successfully use the software products.
2. County shall have reviewed a complete set of User Manuals.
3. County shall be responsible for the installation and integration of any third-party hardware or software application or system purchased by the County, unless otherwise agreed upon, in writing, by the parties.
4. County shall be responsible for data extraction from County voter registration system.
5. County shall be responsible for implementation of any security protocols physical, network or otherwise which are necessary for the proper operation of the Vendor Software.
6. County shall be responsible for the acceptance of the Software, unless otherwise agreed upon, in writing, by the parties.
7. County shall be responsible for the design, layout, set up, administration, maintenance or connectivity of the County's network.

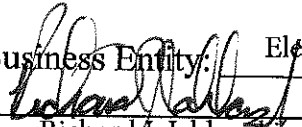


8. County shall be responsible for the resolution of any errors associated with the County's network or other hardware and software not purchased or recommended by Vendor and not otherwise identified in the User Guides as part of Vendor's Software.
9. County shall be responsible for all costs associated with diagnosing ballot printing problems resulting from the use of non-Vendor Ballot Partner Printers ballots.
10. County shall be responsible for the payment of additional or replacement Software CDs or DVDs requested by County. The price for such additional or replacement Software CDs or DVDs shall be at Vendor's then current rates.

**Contracting Agency: County of Gloucester**

NONE.

By signing below, you are certifying that the information you have provided is accurate, and that you are aware that if you have made any misrepresentation in this certification, then you and/or your business entity will be liable for any penalty permitted under the law.

Name of Business Entity: Election Systems & Software, LLC.  
Signed:  Title: VP of Finance  
Print Name: Richard J. Jablonski Date: October 29, 2018

Note: Copies of certain portions of the applicable law are attached to this certification as an accommodation to the vendor. However, the vendor is responsible for determining and certifying its compliance with the applicable law.

## PARTIAL SCHEDULE OF RELEVANT STATUTES

**N.J.S.A. 19:44A-20.26** Not later than 10 days prior to entering into any contract having an anticipated value in excess of \$17,500, except for a contract that is required by law to be publicly advertised for bids, a State agency, county, municipality, independent authority, board of education, or fire district shall require any business entity bidding thereon or negotiating therefor, to submit along with its bid or price quote, a list of political contributions as set forth in this subsection that are reportable by the recipient pursuant to the provisions of P.L.1973, c.83 (C.19:44A-1 et seq.) and that were made by the business entity during the preceding 12 month period, along with the date and amount of each contribution and the name of the recipient of each contribution. A business entity contracting with a State agency shall disclose contributions to any State, county, or municipal committee of a political party, legislative leadership committee, candidate committee of a candidate for, or holder of, a State elective office, or any continuing political committee. A business entity contracting with a county, municipality, independent authority, other than an independent authority that is a State agency, board of education, or fire district shall disclose contributions to: any State, county, or municipal committee of a political party; any legislative leadership committee; or any candidate committee of a candidate for, or holder of, an elective office of that public entity, of that county in which that public entity is located, of another public entity within that county, or of a legislative district in which that public entity is located or, when the public entity is a county, of any legislative district which includes all or part of the county, or any continuing political committee.

The provisions of this section shall not apply to a contract when a public emergency requires the immediate delivery of goods or services.

b. When a business entity is a natural person, a contribution by that person's spouse or child, residing therewith, shall be deemed to be a contribution by the business entity. When a business entity is other than a natural person, a contribution by any person or other business entity having an interest therein shall be deemed to be a contribution by the business entity. When a business entity is other than a natural person, a contribution by: all principals, partners, officers, or directors of the business entity or their spouses; any subsidiaries directly or indirectly controlled by the business entity; or any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee, shall be deemed to be a contribution by the business entity.

## **PARTIAL SCHEDULE OF RELEVANT STATUTES (continued)**

c. As used in this section:

“business entity” means a natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of this State or of any other state or foreign jurisdiction;

“interest” means the ownership or control of more than 10% of the profits or assets of a business entity or 10% of the stock in the case of a business entity that is a corporation for profit, as appropriate; and

“State agency” means any of the principal departments in the Executive Branch of the State Government, and any division, board, bureau, office, commission, or other instrumentality within or created by such department, the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch, and any independent State authority, commission, instrumentality or agency.

d. Any business entity that fails to comply with the provisions of this section shall be subject to a fine imposed by the New Jersey Election Law Enforcement Commission in an amount to be determined by the commission which may be based upon the amount that the business entity failed to report.

## BUSINESS ENTITY DISCLOSURE CERTIFICATION

Contracting Agency: County of Gloucester

N.J.S.A. 19:44A-20-4 et seq., commonly known as the New Jersey Local Unit Pay-to-Play Law, provides that Gloucester County may not award a contract for more than \$17,500.00 to any business entity which has made certain reportable campaign contributions unless the contract is awarded pursuant to a fair and open process.

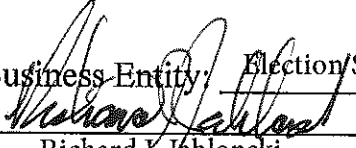
Reportable campaign contributions (as defined by N.J.S.A. 19:44A-1 et seq.) may not have been made to any County committee of a political party in Gloucester County if a member of that political party is serving in an elective public office of Gloucester County at the time that the contract is awarded, or to any candidate committee of any person serving in an elective public office of Gloucester County when the contract is awarded.

The law further prohibits the business entity receiving the contract from making such contributions during the term of the contract, unless the contract is awarded pursuant to a fair and open process.

Having considered the limitations set forth above, the undersigned business entity hereby certifies that neither it nor anyone with an interest in it has, during the one year period preceding the award of the contract, made such a reportable contribution that would bar the award of a contract to it. The undersigned further certifies that neither it, nor anyone within an interest in it, will make any such contribution during the term of the contract awarded.

The undersigned is fully aware that if he/she has made any misrepresentation in this certification, he/she and/or the business entity will be liable for any penalty permitted under the law.

Name of Business Entity: Election Systems & Software, LLC.

Signed:  Title: VP of Finance

Print Name: Richard J. Jablonski Date: October 29, 2018

Note: Copies of certain portions of the applicable law are attached to this certification as an accommodation to the vendor. However, the vendor is responsible for determining and certifying its compliance with the applicable law.

## **PARTIAL SCHEDULE OF RELEVANT STATUTES**

### **19:44A-20.6. Person as business entity; contributions by spouse or child of person; contributions by persons having interest in business**

When a business entity is a natural person, a contribution by that person's spouse or child, residing therewith, shall be deemed to be a contribution by the business entity. When a business entity is other than a natural person, a contribution by any person or other business entity having an interest therein shall be deemed to be a contribution by the business entity.

### **19:44A-20.7. Definitions**

As used in sections 2 through 12 of this act:

"business entity" means any natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of this State or of any other state or foreign jurisdiction;

"interest" means the ownership or control of more than 10% of the profits or assets of a business entity or 10% of the stock in the case of a business entity that is a corporation for profit, as appropriate;

"fair and open process" means, at a minimum, that the contract shall be: publicly advertised in newspapers or on the Internet website maintained by the public entity in sufficient time to give notice in advance of the contract; awarded under a process that provides for public solicitation of proposals or qualifications and awarded and disclosed under criteria established in writing by the public entity prior to the solicitation of proposals or qualifications; and publicly opened and announced when awarded. The decision of a public entity as to what constitutes a fair and open process shall be final.

"State agency in the Legislative Branch" means the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch.

### **19:44A-20.8. Duty to report contributions**

a. Prior to awarding any contract, except a contract that is awarded pursuant to a fair and open process, a State agency in the Legislative Branch, a county, or a municipality shall require the business entity to which the contract is to be awarded to provide a written certification that it has not made a contribution that would bar the award of a contract pursuant to this act.

## **PARTIAL SCHEDULE OF RELEVANT STATUTES**

b. A business entity shall have a continuing duty to report to the Election Law Enforcement Commission any contributions that constitute a violation of this act that are made during the duration of a contract.

### **19:44A-20.9. Repayment of contribution**

If a business entity makes a contribution that would cause it to be ineligible to receive a public contract or, in the case of a contribution made during the term of a public contract, that would constitute a violation of this act, the business entity may request, in writing, within 60 days of the date on which the contribution was made, that the recipient thereof repay the contribution and, if repayment is received within those 60 days, the business entity would again be eligible to receive a contract or would no longer be in violation, as appropriate.

### **19:44A-20.10. Violation of act by business entity; penalty**

A business entity which is determined by the Election Law Enforcement Commission to have willfully and intentionally made a contribution or failed to reveal a contribution in violation of this act may be liable to a penalty of up to the value of its contract with the public entity and may be debarred by the State Treasurer from contracting with any public entity for up to five years.